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AMERICAN RED CROSS BLOOD SERVICES  
SOUTHERN CALIFORNIA REGION, Improperly  
Sued As The American Red Cross, STEVE  
BROWN and ROBERT BROWNING

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRIAN SETENCICH,

Plaintiff,

v.

THE AMERICAN RED CROSS, a non-  
profit corporation, STEVE BROWN,  
ROBERT BROWNING and DOES 1  
through 30, inclusive,

Defendants.

Case No. C 07-03688 JCS

**JOINT CASE MANAGEMENT  
STATEMENT AND PROPOSED ORDER**

Date: December 11, 2007  
Time: 1:00 p.m.  
Judge: Hon. Sandra B. Armstrong

**I.****JURISDICTION AND SERVICE**

Diversity jurisdiction under 28 U.S.C. §1332 exists because the American Red Cross (“ARC”) is a federally chartered instrumentality of the United States and a corporation with its principal place of business in the District of Columbia (26 U.S.C. §300101). ARC was served on June 19, 2007 with the San Francisco Superior Court action. Thereafter, ARC removed the matter. Defendants Steve Brown and Robert Browning were served on Monday, September 18, 2007. On November 8, 2007, the plaintiff filed a first amended complaint. On November 27, 2007, each of the defendants filed motions to dismiss the first amended complaint which are set to be heard on February 12, 2008.

**II.****DESCRIPTION OF THE CASE****1. Brief description of events**

**Plaintiff:** Plaintiff, Brian Setencich (“Setencich”) was recruited by the Director of Public Affairs and Communication, Marc Jackson to be ARC’s Communications Manager. Setencich participated in three rounds of interviews with ARC’s interview panel, which included Matt Peckerol, M.D. The board recommended the hire of Setencich as the most qualified candidate. Defendant Steve Brown told Setencich that his criminal record of filing a false tax return would not impede his hire. However, defendants, including Vice President Steve Brown and Director Robert Browning never intended on hiring Setencich given his association with Marc Jackson, who defendants targeted to constructively discharge due to his disability and protected activity. As a result of defendant’s conduct, Setencich has been harmed in that he did not seek alternative employment during the lengthy meet and greet process, given the representations from the defendants. In addition, Setencich suffered emotional distress damages given the defendants’ conduct.

**Defendants:** On June 1, 2005, Plaintiff submitted an application for employment to ARC based on a referral from Mr. Jackson. ARC welcomes employee referrals; however, Human Resources is the only department authorized to invite potential job candidates to interview. If

1 H.R. feels a candidate from out of town meets all qualifications, has completed a thorough  
 2 telephone interview, and is among the final candidates, the Region arranges and pays for travel to  
 3 ARC's office for face-to-face interviews. H.R. did not take these actions with Plaintiff.

4 At Mr. Jackson's request and as a courtesy to him, Bob Browning and Steve Brown each  
 5 met separately with Plaintiff in the Pomona office on a day that he was visiting his former  
 6 employee, Mr. Jackson. ARC's records do not reflect that an interview panel was convened to  
 7 meet with Plaintiff or that any "board" recommended his hiring. ARC cannot say whether Mr.  
 8 Jackson made his own arrangements to have Plaintiff meet with other staff at a time when  
 9 Plaintiff was visiting Mr. Jackson; however, if that occurred, it was not authorized or part of any  
 10 formal application process through H.R.

11 Mr. Brown denies that he told Plaintiff that Plaintiff's conviction would not impede his  
 12 hiring. ARC policy states that convictions within the 7 year period preceding an application  
 13 which pertain to financial crimes could be a basis for a decision not to hire. Further, the decision  
 14 not to offer employment to Plaintiff was not related to his association with Mr. Jackson, who is  
 15 still employed by ARC and has not been targeted for discharge for his disability or for engaging  
 16 in protected activity.

17 ARC denies that Plaintiff has been harmed in any amount or manner by ARC. In the  
 18 event Plaintiff did not seek alternative employment at any period when he was seeking  
 19 employment by ARC, Plaintiff's choice was not justified by any conduct on the part of ARC.

20 **2. Factual issues that are in dispute:**

- 21 (a) That ARC denied Setencich employment as a result of his association with
- 22 current Director of Public Affairs and Communication, Marc Jackson
- 23 because of Jackson's disability and protected activities.
- 24 (b) That Setencich participated in three rounds of interviews;
- 25 (c) That "the panel" recommended the hire of Setencich as the most qualified
- 26 candidate;
- 27 (d) That defendants represented to Setencich that he was hired; and
- 28 (e) That defendants represented to Setencich that his prior criminal conviction



would not impede his hire.

**3. The principal legal issues in dispute:**

- (a) Whether ARC subjected Setencich to unlawful employment discrimination in violation of the Fair Employment and Housing Act ("FEHA");
- (b) Whether defendants committed fraud by allegedly representing to Setencich he was hired and his prior criminal conviction would not impede his hire;
- (c) Whether defendants engaged in making negligent misrepresentations by allegedly representing to Setencich he was hired and his prior criminal conviction would not impede his hire; and
- (d) Whether any conduct by any of the defendants caused any compensable damage to Setencich.

**4. Other factual issues:**

Not known at this time.

**5. Joinder of other parties:**

Plaintiff will seek to amend his Complaint or bring a motion to consolidate if Marc Jackson decides to sue ARC. Plaintiff is informed and believes Marc Jackson has perfected his right to sue by filing a Department of Fair Employment and Housing ("DFEH") Complaint but is unable to confirm whether or not Marc Jackson intends on bringing a lawsuit against ARC. The defendants would likely oppose any effort to join Marc Jackson in the instant action or consolidate this action with any brought by Mr. Jackson. Among other things, such a joinder or consolidation would cause unnecessary delay in proceeding with the instant action and accordingly would unduly prejudice the defendants.

**6. Evidence Preservation:**

**Plaintiff:** Plaintiff has retained all documents that he has created, received or obtained in connection with the facts alleged in the complaint.

**Defendants:** Counsel for ARC is coordinating with ARC's Human Resources, Legal and IT departments to preserve all evidence relevant to issues reasonably evident in this action.

1           **7. Consent to assignment of a U.S. Magistrate Judge:**

2           The defendants do not consent to the assignment of a U.S. Magistrate for this matter.

3   **III.**

4   **MOTIONS**

5           Plaintiff intends on filing a motion for leave to amend his complaint or consolidate if  
6           Marc Jackson decides to sue ARC. Each of the defendants has filed a motion to dismiss the entire  
7           action. In the event this action survives beyond the pleading stage, the defendants anticipate  
8           filing a motion for summary judgment or partial summary judgment.

9   **IV.**

10    **DISCOVERY**

11           The parties propose the following discovery plan:

12 <u>Activities</u>	12 <u>Completed By</u>
13           Fact Discovery	13           30 days before trial
14           Expert disclosures	14           90 days before trial
15           Expert depositions	15           30 days before trial

16           The parties request court permission to be able to stipulate to changes to discovery  
17           procedures that do not affect court deadlines without seeking court approval.

18   **V.**

19    **RELIEF**

20           Plaintiff seeks compensatory damages, punitive damages and attorney fees under  
21           California Government Code Section 12965(b). The defendants assert that if Plaintiff could  
22           establish liability, his wage recovery should be limited to the period from the date of his  
23           termination until the date he commenced other employment, less any appropriate adjustments for  
24           insufficient mitigation efforts or periods when he was not able to work. Any medical costs should  
25           be calculated based on Plaintiff's ability to establish that unlawful conduct by the defendants  
26           caused Plaintiff to incur the costs and based on his ability to establish the legitimacy of the costs.

27           ///

28           ///

VI.

SETTLEMENT AND ADR

The parties agree to an early mediation in front of a Court-appointed mediator.

VII.

TRIAL SCHEDULE

1. Requested trial date

December 8, 2008

2. Anticipated trial length

This case will be tried by jury and is anticipated to be a 7 day jury trial.

VIII.

DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSON

The parties have filed their disclosures of non-party interested entities or persons pursuant to Civil L.R. 3-16.

DATED: 11/30/06

LAW OFFICES OF JILL P. TELFER  
*A Professional Corporation*

Jill P. Telfer / SLS  
JILL P. TELFER  
Attorney for Plaintiff  
**BRIAN SETENCICH**

DATED: 11/30/06

BAKER & HOSTETLER LL;

Sabrina L. Shadi  
SABRINA L. SHADI  
Attorneys for Defendant AMERICAN RED  
CROSS BLOOD SERVICES SOUTHERN  
CALIFORNIA REGION, STEVE BROWN and  
ROBERT BROWNING

**CASE MANAGEMENT ORDER**

The Case Management and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition, the court orders:

Dated: \_\_\_\_\_  
JUDGE, UNITED STATES DISTRICT COURT